

This letter concerns electricity, gas, and water services provided to manufacturers. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

June 11, 2007

Dear Xxxxx:

This letter is in response to your letter dated May 23, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a professional engineering company that provides utility studies for our clients. We would like clarification on the following issues:

1. Is there any exemption to State Sales Tax or City fees available to manufacturers for the use of gas, electricity and water in the manufacturing process?
2. If yes, are research and development activities and packaging operations considered manufacturing?
3. What is your sales tax rate and the statute of limitations?
4. Can local cities impose their own tax and are they subject to any exemptions?
5. Are there any exemptions available to residential accounts for the use of water, gas and electricity?
6. If yes, are nursing homes and apartment buildings considered residential?
7. Are there any other circumstances where utilities could be considered exempt from tax?
8. Who can we talk to or write to if we have additional questions concerning sales and use tax?

Please send us the forms necessary to file a claim for refund and exemption. Also, could you explain the proper procedure for filing a claim, including whether we file it with the state or the utility company.

Thank you in advance for your timely response.

DEPARTMENT'S RESPONSE:

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See the enclosed copy of 86 Ill. Adm. Code 130.330. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation. Please note that the manufacturing machinery and equipment exemption does not extend to supplies. See 86 Ill. Adm. Code 130.330(c)(3).

Electricity is not taxed under the Retailers' Occupation Tax Act or Use Tax Act. In Illinois, the Electricity Excise Tax Law imposes a State tax on the privilege of using in this State electricity purchased for use or consumption. See 86 Ill. Adm. Code 511.110. The incidence of this tax is on the consumers of electricity and is collected by the consumers delivering supplier. There are limited exemptions from tax in this law. Persons using electricity to manufacture products for resale are not exempt from paying the tax to their delivering suppliers. However, please note that businesses that qualify as high impact businesses under Section 5.5 of the Illinois Enterprise Zone Act (20 ILCS 655/5.5) or certified business enterprises under the Section 9-222.1 of the Public Utilities Act are exempt from Electricity Excise Tax to the extent of such exemption and during the period in which the exemption is in effect.

The sale of gas services in Illinois is not taxed under the Retailers' Occupation Tax Act or Use Tax Act but is subject to taxation under the Gas Revenue Tax Act (35 ILCS 615/1 et seq.). The Gas Revenue Tax Act does not provide any type of general exemption for manufacturing use. There is, however, an exemption from these taxes for sales made to business enterprises that are certified by the Department of Commerce and Community Affairs under Section 9-222.1 of the Public Utilities Act (220 ILCS 5/9-222.1). The criteria for certification are found in Section 9-222.1 of the Public Utilities Act. Certifications are made as part of the Enterprise Zone program. For information about that program, you should contact the Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, Illinois 62701.

For purchases of out-of-State gas not subject to Gas Revenue Tax, Gas Use Tax is imposed upon the privilege of using in this State gas obtained in a purchase of out-of-State gas at the rate or rates set forth in the Act. See 86 Ill. Adm. Code 471.105. The Gas Use Tax Act does not provide any type of general exemption for manufacturing use. However, unlike the Gas Revenue Tax Act, the Gas Use Tax Law does provide a number of exemptions. Those exemptions are listed in 86 Ill. Adm. Code 471.125.

It is important to note that the above stated State taxes are in addition to any local taxes and fees that may apply. Please note that the Department does not administer these local taxes and cannot provide you with a legal interpretation regarding the administration of these taxes. We can provide you with some general information regarding the imposition of such taxes. Local electricity taxes can be imposed under subsection (3) of 65 ILCS 5/8-11-2 and is limited to the amount per kilowatt-hour set out in that subsection. Local gas taxes may be imposed under subsection (2) and (2a) of 65 ILCS 5/8-11-2 up to the maximum amount of 5% or 8% depending upon the population limits set out in those subsections.

Sales of water through a distribution system consisting of pipes laid in the ground are not taxable under either the Retailers' Occupation Tax Act or Use Tax Act.

Claims for credit and refunds are available when a taxpayer shows that he paid tax to the Department as a result of a mistake of fact or law. See 86 Ill. Adm. Code 130.1501. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a credit. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. The Department cannot approve any claim for credit unless the claimant clearly establishes that he or she has unconditionally repaid the amount of the tax to the person from whom he has collected the tax. The statute of limitations for filing a claim for credit is described in 86 Ill. Admin. Code 130.1501(a)(4).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

TDC:msk